IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4079 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORBHAI BABULAL BHANUSHALI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

RULE SERVED BY DS for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 24-3-2000 passed by the Police Commissioner, Rajkot City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the authority through his cousin brother on 17-4-2000 which has been received by the authority on 20-4-2000. It is submitted that said representation has been forwarded by the detaining authority to the State Govt. on 21-4-2000 and it has been rejected by the State Govt. on 28-4-2000 and, therefore, there is a delay in considering the representation. Learned APP has fairly admitted the same.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, though the detenu has sent the representation on 17-4-2000 to the detaining authority, the same has been forwarded to the State Govt. on 21-4-2000. It appears that said representation has been rejected by the State Govt. on 28-4-2000, i.e. after a period of 11 days and no explanation has been putforward by the authority explaining satisfactorily the delay caused in deciding the representation. It is to be noted that delay is also caused in forwarding the representation. Therefore, in view of the above judgment of the Apex Court, the continued detention of the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 24-3-2000 passed against the

petitioner-detenu is hereby quashed and set aside. The detenu-Kishorbhai Babubhai Bhanushali is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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